

REMARKS

Applicants thank the Examiner for the thorough examination given the present application.

Status of the Claims

Claims 1-2 and 4-15 will be pending in the above-identified application upon entry of the present amendment. Claims 1-2 and 4-5 stand ready for further action on the merits, and claims 6-15 are currently withdrawn from consideration. Claim 1 has been amended by incorporating the subject matter of claim 3. As such, claim 3 has been cancelled herein. The present amendments do not introduce new matter into the application as originally filed. Based upon the above considerations, entry of the present amendment is respectfully requested.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

Allowable Subject Matter

Applicants acknowledge the indication of allowable subject matter of claim 3. Applicants have incorporated the allowable subject matter of claim 3 into independent claim 1. All pending claims depend from claim 1. As such, all pending claims are believed to be directed to allowable subject matter. Therefore, Applicants respectfully submit that this application is now in condition for allowance. An early reconsideration and Notice of Allowance are respectfully requested.

Issues over the Cited References

Claims 1-2 and 4 are rejected under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being obvious over **Broer ‘850** (US 5,024,850) as evidenced by **Andreatta ‘389** (US 5,751,389).

Claim 5 is rejected under 35 U.S.C. § 103(a) as being unpatentable over **Broer ‘850** in view of **Andreatta ‘389** and further in view of **Miroshin ‘594** (US 6,767,594).

Applicants respectfully traverse. Reconsideration and withdrawal of these rejections are respectfully requested based on the following considerations.

Legal Standard for Determining Anticipation

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art.” *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001). “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Legal Standard for Determining Prima Facie Obviousness

MPEP 2141 sets forth the guidelines in determining obviousness. First, the Examiner has to take into account the factual inquiries set forth in *Graham v. John Deere*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), which has provided the controlling framework for an obviousness analysis. The four *Graham* factors are:

- (a) determining the scope and content of the prior art;
- (b) ascertaining the differences between the prior art and the claims in issue;
- (c) resolving the level of ordinary skill in the pertinent art; and
- (d) evaluating any evidence of secondary considerations.

Graham v. John Deere, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966).

Second, the Examiner has to provide some rationale for determining obviousness. MPEP 2143 sets forth some rationales that were established in the recent decision of *KSR International Co. v Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007). Exemplary rationales that may support a conclusion of obviousness include:

- (a) combining prior art elements according to known methods to yield predictable results;
- (b) simple substitution of one known element for another to obtain predictable results;
- (c) use of known technique to improve similar devices (methods, or products) in the same way;
- (d) applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
- (e) “obvious to try” – choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success

(f) known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art;

(g) some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

As the MPEP directs, all claim limitations must be considered in view of the cited prior art in order to establish a *prima facie* case of obviousness. *See* MPEP 2143.03.

Distinctions over the Cited References

As amended, independent claim 1 now recites the subject matter of claim 3, which the Examiner has indicated to be allowable subject matter. As such, the cited references fail to disclose each and every element of the pending claims.

Accordingly, the present invention is not anticipated by **Broer '850** since the reference does not teach or provide for each of the limitations recited in the pending claims.

Moreover, a *prima facie* case of obviousness has not been established. To establish a *prima facie* case of obviousness, all of the claim limitations must be disclosed by the cited references. As discussed above, **Broer '850**, with or without the other cited references, fail to disclose all of the claim limitations of independent claim 1, and those claims dependent thereon. Accordingly, the reference does not render the present invention obvious.

Furthermore, the cited references or the knowledge in the art provide no reason or rationale that would allow one of ordinary skill in the art to arrive at the present invention as claimed. Therefore, withdrawal of the outstanding rejections is respectfully requested. Any contentions of the USPTO to the contrary must be reconsidered at present.

CONCLUSION

A full and complete response has been made to all issues as cited in the Office Action. Applicants have taken substantial steps in efforts to advance prosecution of the present application. Thus, Applicants respectfully request that a timely Notice of Allowance issue for the present case clearly indicating that each of claims 1-5 are allowed and patentable under the provisions of title 35 of the United States Code.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Chad M. Rink, Reg. No. 58,258 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

By 

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